

Internal Revenue Service  
Memorandum

October 8, 1999

To: District Director, Illinois  
Examination Division, Group E [REDACTED]  
Attention: Case Manager [REDACTED]  
Attention: Team Coordinator [REDACTED]

From: District Counsel, Illinois

Subject: AO: [REDACTED] (use of Court protected documents)

Cycle: [REDACTED]

POA: [REDACTED]

Non-Docketed Large Case opinion: CEP.<sup>1</sup>

This is to memorialize the oral advice which we previously gave you in response to your request for legal opinion, and to supplement that prior advice. The specific questions presented and our answers are, as follows:

Question 1: May legal documents marked "To be opened only as directed by the Court" be quoted in the Revenue Agent's Report?

Yes. The "Stipulated Amendment to Protective Orders Under Rule 26(c) Federal Rules of Civil Procedure" provide that the Service is one of the "qualified recipients" of the information, for the purposes for which the Service is using it. See "Stipulated Amendment to Protective Orders Under Rule 26(c) Fed.R.Civ.P. , at page 4, paragraph [4](1), and page 7, paragraph 23.

Question 2: May such a document be attached as an exhibit to the Revenue Agent's Report? Yes, for the same reason given in answer to question 1 above.

Facts, Discussion and Legal Opinion

During the course of the prior audit and, perhaps, also during the course of the present audit, the taxpayer, [REDACTED], provided to the Service a number of

<sup>1</sup> This opinion is that of District Counsel, Illinois. Because this is a CEP case, a copy of this opinion is being sent to the national office. Given the fact that the opinion is based on well-settled principles of law, the opinion is being sent to the national office for coordination purposes only. Nevertheless, if the national office chooses to post-review it and if modifications or recommendations result, we will inform you of these. We will do this by supplemental memorandum, where appropriate.


documents (e.g., complaints and amended complaints) from a patent infringement action to which it was a party. The civil action in question was [REDACTED]

[REDACTED], in the U.S. District Court for the [REDACTED]. A number of these documents carry the following legend (or a similarly worded legend):

“Proprietary Information  
Designated by the [REDACTED]  
Under Protective Order  
United States District Court  
[REDACTED]”

Team Coordinator [REDACTED] wanted to ensure that the Service’s use of the documents at issue do not violate the protective order. Accordingly, she obtained a copy of the “Stipulated Amendment to Protective Orders under 26(c) Federal Rules of Civil Procedure,” which is dated [REDACTED], and is signed by the Federal District Court Judge and the attorneys for the plaintiff, [REDACTED] and the attorneys for the defendants, [REDACTED] [the taxpayer in our instant case], and [REDACTED]. It provides, in pertinent part that the protective orders are amended so that Examination Division personnel, Appeals Office personnel, Chief Counsel attorneys, legal assistants and staff involved in any examination, appeals process, or litigation relating to the treatment in the Federal Income Tax Returns of [REDACTED] for the calendar years [REDACTED] through [REDACTED], of the settlement of Civil Actions Nos. [REDACTED], are authorized users of the information, pursuant to the confidentiality requirements of the orders. See, page 5, paragraph (4)(i) and page 7, paragraphs 22 and 23. Finally, we note that although we were only provided with the “Stipulated Amendment to Protective Orders Under Rule 26(c) Federal Rules of Civil Procedure”, and not the original protective orders, there was sufficient information in the amendment to safely reach the conclusion that the Service was intended to be a qualified recipient and user of the information.

District Counsel  
Richard A. Witkowski

By:   
Rogelio A. Villageliu  
District Counsel

CC: District Counsel, Illinois District

CC: DOM:FS

CC: Assistant Regional Counsel (Large Case), MS (Chicago)

CC: Assistant Regional Counsel (TL), MS (Dallas)

A:\[REDACTED]AO.wpd